

Interim Decision #2106

MATTER OF CHEUNG
In Deportation Proceedings
A-15171770

Decided by Board November 30, 1971

Where respondent, after stating his name and that he understood the charge brought against him, refused to testify at his deportation hearing, deportability under section 241(a)(2), Immigration and Nationality Act, is established by clear, convincing and unequivocal evidence on the basis of (a) the identity of names of respondent and of the crewman who is the subject of documents which were in possession of the Service before respondent's apprehension (seaman's Identity Book, Arrival Manifest (Form I-418), and the carrier's report of the desertion of a crewman), and (b) the failure of respondent to show that the documents do not relate to him.

CHARGE:

Order: Act of 1952—Section 241(a)(2) [8 U.S.C. 1251(a)(2)]—Nonimmigrant crewman—remained longer.

ON BEHALF OF RESPONDENT:
Peter Zimmerman, Esquire
100 State Street
Boston, Massachusetts 02109

ON BEHALF OF SERVICE:
Irving A. Appleman
Appellate Trial Attorney

Respondent appeals from the special inquiry officer's order requiring his deportation. The appeal will be dismissed. Voluntary departure will be granted.

The facts have been fully stated by the special inquiry officer. Respondent refused to testify on the advice of counsel. He did not claim his answers would incriminate him. He did state he is Cheung-Shui and that he understood the charge brought against him (pp. 1-3). Counsel contends that the order of deportation is based on documents the Service obtained by the illegal arrest and search of the respondent. In finding respondent deportable, we rely solely upon evidence which was in possession of the Service before the respondent's arrest which occurred on or about June 5, 1970.